

ASSEMBLY BILL

No. 446

Introduced by Assembly Member Mitchell

February 19, 2013

An act to amend Sections 120990 and 123148 of, and to add Section 120991 to, the Health and Safety Code, relating to HIV testing.

LEGISLATIVE COUNSEL'S DIGEST

AB 446, as introduced, Mitchell. HIV testing.

Existing law requires a medical care provider, prior to ordering an HIV test, to, among other things, provide information about the test, inform the patient that there are numerous treatment options available for a patient who tests positive for HIV, and inform the patient that a person who tests negative for HIV should continue to be routinely tested. Existing law, with specified exceptions, requires a written statement documenting the test subject's informed consent prior to the performance of an HIV test.

This bill would delete the requirement that the medical care provider provide a patient with information about the HIV test, the treatment options, and the advisability of continued testing. The bill would also delete the requirement for a written statement of informed consent. The bill would require an HIV test to be performed for each draw of blood that is ordered for a patient in the emergency department of a general acute care hospital, a public health clinic, or an urgent care center, provided that the patient has consented and would require the results of the HIV test to be given to the patient before he or she leave the facility unless he or she leaves before being released.

Existing law regulates the disclosure of test results for HIV and other diseases. Existing law prohibits the disclosure of HIV test results by

Internet posting or other electronic means unless the patient requests the disclosure, the healthcare professional deems it appropriate, and the health care professional has first discussed the results in person or over the phone.

This bill would authorize disclosure of HIV test results by Internet posting or other electronic means if the result is posted on a secure Internet Web site and can only be viewed with the use of a secure personal identification number provided to the patient at the time of testing.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 120990 of the Health and Safety Code
2 is amended to read:
3 120990. (a) Prior to ordering a test that identifies infection of
4 a patient with HIV, a medical care provider shall inform the patient
5 that the test is planned; ~~provide information about the test, inform~~
6 ~~the patient that there are numerous treatment options available for~~
7 ~~a patient who tests positive for HIV and that a person who tests~~
8 ~~negative for HIV should continue to be routinely tested; and advise~~
9 the patient that he or she has the right to decline the test. If a patient
10 declines the test, the medical care provider shall note that fact in
11 the patient's medical file, *if a medical file exists. For purposes of*
12 *this subdivision, a medical care provider includes a person*
13 *authorized to administer an HIV test pursuant to Section 120917.*
14 *This subdivision applies to testing in a clinical and nonclinical*
15 *setting, if a test performed in a nonclinical setting is classified as*
16 *waived under the federal Clinical Laboratory Improvement Act*
17 *(CLIA) (42 U.S.C. Sec. 263a).*
18 (b) Subdivision (a) ~~shall~~ *does* not apply when a person
19 independently requests an HIV test from the provider.
20 ~~(c) Except as provided in subdivision (a), no person shall~~
21 ~~administer a test for HIV infection unless the person being tested~~
22 ~~or his or her parent, guardian, conservator, or other person specified~~
23 ~~in Section 121020, signs a written statement documenting the~~
24 ~~person's informed consent to the test. This requirement does not~~
25 ~~apply to such a test performed at an alternative site pursuant to~~
26 ~~Sections 120890 or 120895. Nothing in this section shall be~~

1 ~~construed to allow a person to administer a test for HIV unless~~
2 ~~that person is otherwise permitted under current law to administer~~
3 ~~an HIV test.~~

4 ~~(d)~~

5 (c) Nothing in this section shall preclude a medical examiner
6 or other physician from ordering or performing a test to detect
7 HIV on a cadaver when an autopsy is performed or body parts are
8 donated pursuant to the Uniform Anatomical Gift Act (Chapter
9 3.5 (commencing with Section 7150) of Part 1 of Division 7).

10 ~~(e) (1) The requirements of subdivision (c) do not apply when~~
11 ~~blood is tested as part of a scientific investigation conducted either~~
12 ~~by a medical researcher operating under the approval of an~~
13 ~~institutional review board or by the department, in accordance with~~
14 ~~a protocol for unlinked testing.~~

15 ~~(2) For purposes of this subdivision, "unlinked testing" means~~
16 ~~blood samples that are obtained anonymously, or that have the~~
17 ~~name or identifying information of the individual who provided~~
18 ~~the sample removed in a manner that prevents the test results from~~
19 ~~ever being linked to a particular individual who participated in the~~
20 ~~research or study.~~

21 ~~(f)~~

22 (d) Nothing in this section shall be construed to ~~permit~~ *permits*
23 any person to unlawfully disclose an individual's HIV status, or
24 to otherwise violate provisions of Section 54 of the Civil Code,
25 the Americans With Disabilities Act of 1990 (Public Law 101-336),
26 or the California Fair Employment and Housing Act (Part 2.8
27 (commencing with Section 12900) of Division 3 of Title 2 of the
28 Government Code), which prohibit discrimination against
29 individuals who are living with HIV, or who test positive for HIV,
30 or are presumed to be HIV-positive.

31 SEC. 2. Section 120991 is added to the Health and Safety Code,
32 to read:

33 120991. Each draw of blood ordered for a patient in the
34 emergency department of a general acute care hospital, a public
35 health clinic, or an urgent care center shall be tested for HIV,
36 provided that the patient has consented to the HIV test pursuant
37 to Section 120990. The emergency department, public health clinic,
38 or urgent care center shall provide the test results to the patient
39 before he or she leaves the facility, unless the patient leaves the
40 facility prior to being released.

1 SEC. 3. Section 123148 of the Health and Safety Code is
2 amended to read:

3 123148. (a) Notwithstanding any other ~~provision of~~ law, a
4 health care professional at whose request a test is performed shall
5 provide or arrange for the provision of the results of a clinical
6 laboratory test to the patient who is the subject of the test if so
7 requested by the patient, in oral or written form. The results shall
8 be disclosed in plain language and in oral or written form, except
9 the results may be disclosed in electronic form if requested by the
10 patient and if deemed most appropriate by the health care
11 professional who requested the test. The telephone shall not be
12 considered an electronic form of disclosing laboratory results
13 subject to the limits on electronic disclosure of test results for the
14 purpose of this section.

15 (b) (1) Consent of the patient to receive his or her laboratory
16 results by Internet posting or other electronic means shall be
17 obtained in a manner consistent with the requirements of Section
18 56.10 or 56.11 of the Civil Code. In the event that a health care
19 professional arranges for the provision of test results by Internet
20 posting or other electronic manner, the results shall be disclosed
21 to a patient in a reasonable time period, but only after the results
22 have been reviewed by the health care professional. Access to
23 clinical laboratory test results shall be restricted by the use of a
24 secure personal identification number when the results are disclosed
25 to a patient by Internet posting or other electronic manner.

26 (2) Nothing in paragraph (1) shall prohibit direct communication
27 by Internet posting or the use of other electronic means to disclose
28 clinical laboratory test results by a treating health care professional
29 who ordered the test for his or her patient or by a health care
30 professional acting on behalf of, or with the authorization of, the
31 treating health care professional who ordered the test.

32 (c) When a patient requests access to his or her laboratory test
33 results by Internet posting, the health care professional shall advise
34 the patient of any charges that may be assessed directly to the
35 patient or insurer for the service and that the patient may call the
36 health care professional for a more detailed explanation of the
37 laboratory test results when delivered.

38 (d) The electronic disclosure of test results under this section
39 shall be in accordance with any applicable federal law governing
40 privacy and security of electronic personal health records.

1 However, any state statute, if enacted, that governs privacy and
2 security of electronic personal health records, shall apply to test
3 results under this section and shall prevail over federal law if
4 federal law permits.

5 (e) The test results to be reported to the patient pursuant to this
6 section shall be recorded in the patient's medical record, and shall
7 be reported to the patient within a reasonable time period after the
8 test results are received at the offices of the health care professional
9 who requested the test.

10 (f) Notwithstanding subdivision (a), unless the patient requests
11 the disclosure, the health care professional deems this disclosure
12 as an appropriate means, and a health care professional has first
13 discussed in person, by telephone, or by any other means of oral
14 communication, the test results with the patient, in compliance
15 with any other applicable laws, none of the following clinical
16 laboratory test results and any other related results shall be
17 disclosed to a patient by Internet posting or other electronic means:

18 (1) HIV antibody test, *unless the test result is posted on a secure*
19 *Internet Web site and can only be viewed with the use of a secure*
20 *personal identification number provided to the patient at the time*
21 *of testing.*

22 (2) Presence of antigens indicating a hepatitis infection.

23 (3) Abusing the use of drugs.

24 (4) Test results related to routinely processed tissues, including
25 skin biopsies, Pap smear tests, products of conception, and bone
26 marrow aspirations for morphological evaluation, if they reveal a
27 malignancy.

28 (g) Patient identifiable test results and health information that
29 have been provided under this section shall not be used for any
30 commercial purpose without the consent of the patient, obtained
31 in a manner consistent with the requirements of Section 56.11 of
32 the Civil Code. In no event shall patient identifiable HIV-related
33 test results and health information disclosed in this section be used
34 in violation of subdivision (f) of Section 120980.

35 (h) Any third party to whom laboratory test results are disclosed
36 pursuant to this section shall be deemed a provider of
37 administrative services, as that term is used in paragraph (3) of
38 subdivision (c) of Section 56.10 of the Civil Code, and shall be
39 subject to all limitations and penalties applicable to that section.

- 1 (i) A patient may not be required to pay any cost, or be charged
- 2 any fee, for electing to receive his or her laboratory results in any
- 3 manner other than by Internet posting or other electronic form.
- 4 (j) A patient or his or her physician may revoke any consent
- 5 provided under this section at any time and without penalty, except
- 6 to the extent that action has been taken in reliance on that consent.